



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-M-M-S-

DATE: AUG. 22, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a public health researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was employed as a postdoctoral fellow at the [REDACTED]

[REDACTED] He asserts that his work there has involved designing and conducting "research in the field of public health, with a focus on oncology." The appellate submission includes the Petitioner's recent job offer letter from [REDACTED] extending his postdoctoral fellowship for an additional year.⁴ For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner states: "I intend to continue my research in comparative effectiveness cancer research with a special focus on the development and treatment of adverse events in cancer patients. This research will help improve the overall quality of life for cancer patients as well as their long term survival." He further explains that as a public health researcher, his work involves "designing systematic reviews of patient samples in order to draw meaningful conclusions from large amounts of data." In addition, the Petitioner indicates that his current research at [REDACTED] is aimed at "an emerging anti-cancer strategy known as 'checkpoint inhibitor immunotherapy.'"⁵ Through "vetting, validating, and flagging important aspects of these drugs," the Petitioner's work allows health practitioners and patients to "make more informed decisions regarding their treatment strategies."

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner presented an academic credentials evaluation indicating that his degree from [REDACTED] (2013) is the foreign "equivalent to the Doctor of Medicine (MD) degree awarded from regionally accredited colleges and universities in the United States." See 8 C.F.R. § 204.5(k)(3)(i)(A).

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his position with [REDACTED] to illustrate the capacity in which he intends to work.

⁵ The Petitioner notes that "[c]heckpoint inhibitors are a fast-growing drug category, three of which have been approved by the FDA [U.S. Food and Drug Administration] in the last few years. Checkpoint inhibitor drugs function by improving the immune system's ability to recognize and target cancer cells in the body."

We find that the Petitioner's proposed research relating to adverse effects of checkpoint inhibitor immunotherapy has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. The record includes letters of support discussing how the Petitioner's proposed work stands to advance "the safety and efficacy of emerging anti-cancer drugs." For instance, ██████ senior vice president and global head of epidemiology for ██████ asserts that "[t]he pharmaceutical industry relies on researchers such as [the Petitioner] to evaluate the performance of new drug therapies to reveal areas of concern that premarket research often fails to expose" and that the Petitioner's "research is poised to play a fundamental role in validating this new class of anti-cancer drugs." Similarly, ██████

█████, a professor of general internal medicine at ██████ states that the "[s]afety of drugs has always been a prime concern when new therapies are introduced" and that the Petitioner's "continued work will establish new ground in the fight to end cancer." Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through medical journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we find that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, published and presented work, and documentation of numerous articles that cited to his research findings. In addition, the Petitioner offered reference letters describing his expertise in public health research and his past record of success in that field.

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor. Multiple independent references identify specific examples of how the Petitioner's research on the side effects of checkpoint inhibitor cancer treatment has impacted the field. For example, ██████ ██████ scientific director of the Institute of ██████, explains that the Petitioner "discovered that this treatment can cause the immune system to overreact and attack healthy cells as well. This was a critical finding, not only so that clinicians can take appropriate precautions when recommending treatment options, but also for researchers developing new viable cancer therapeutics." In addition, ██████ head of the clinical immunology department at the ██████ states that the Petitioner "demonstrated that this therapy frequently led to overactive immune response and, therefore, the damaging of healthy tissue." He further indicates that the Petitioner's "work on the side-effects of cancer therapies has directly impacted the practices of clinical doctors."

Furthermore, ██████ professor of experimental hematology at the ██████ describes the Petitioner as "a leading researcher in the field of public health." She also notes that he "has published in top scientific journals, including ██████ and ██████ and been cited

nearly 300 times by independent researchers.” As corroborating documentation regarding the significance of his work, the Petitioner provides citation evidence showing that his published work has been frequently cited by independent researchers,⁶ and that the rate at which his work has been cited is high relative to others in his field. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner’s experience and expertise in his field, published work, citation evidence, record of success contributing to various research projects, and progress in public health research position him well to advance his proposed endeavor. Accordingly, we find that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a public health researcher, the Petitioner possesses considerable experience and expertise in studying the adverse effects of checkpoint inhibitor immunotherapy. The record also demonstrates the widespread benefits associated with improving the safety and efficacy of emerging anti-cancer drugs. In addition, the Petitioner has documented his past successes in advancing public health research relating to cancer epidemiology and providing influential research findings. Based on the Petitioner’s track record of successful research and the significance of his proposed work to advance U.S. healthcare interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

Cite as *Matter of S-M-M-S-*, ID# 1431363 (AAO Aug. 22, 2018)

⁶ For instance, the Petitioner’s appellate submission includes a citation index from [REDACTED] indicating that his top three articles have been cited to an aggregate of 341 times.